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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Report of the Third United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

held at the Palais des Nations, Geneva,
from 13 to 21 November 1995

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Third United Nations Conference to Review
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Geneva, 13 November 1995

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INTRODUCTION

1. Pursuant to General Assembly resolution 48/442 of 21 December 1993, the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was convened, under the auspices of UNCTAD, at the Palais des Nations, Geneva, from 13 to 21 November 1995.

2. The Intergovernmental Group of Experts on Restrictive Business Practices at its fourteenth session (6-10 March 1995) acted as the preparatory body for the Review Conference. 1/

3. In the course of the session, the Review Conference held five plenary meetings. This report gives a brief account of the proceedings of those meetings.

Opening statements

4. Opening the Third Review Conference, in his capacity as President of the Second Review Conference in 1990, the representative of the **United Kingdom** recalled that he had had the privilege to preside over the Conference in 1990 when, for the first time, it had agreed on a resolution on substantive issues. That Conference had decided that the Set should be strengthened and had called upon States to implement the provisions of the Set and to adopt appropriate legislation. The resolution had laid the ground for an expanded technical assistance programme and had, of course, recommended that this Third Review Conference be held in 1995. In the intervening five years considerable progress had been made. Many countries had introduced appropriate laws and a substantial programme of technical assistance had been undertaken. The time had come to review once again the application of the Set and to consider proposals for its improvement and further development, and he trusted that the Third Review Conference would prove even more successful than the Second Conference in ensuring the implementation of the Set into the next century.

5. In his opening statement, the incoming **President**, Mr. Eduardo Garmendia (Venezuela), referring to the changes which had occurred in the world economy since the adoption of the Set 15 years ago, noted the increasing adoption of economic systems in which the market was considered to be the promoter of development. At the international level there were new rules in which the control of RBPs would have an important role to play. Competition policy was one of the most important issues worldwide and this was reflected by the increasing number of countries that were adopting competition legislation. He expressed appreciation to UNCTAD and the Intergovernmental Group of Experts on Restricted Business Practices on the support given to many countries in the process of considering and adopting competition legislation. Referring to the lack of human and financial resources available to the RBPs Unit, he urged the Conference to analyse the possibility of strengthening the capacity of the Unit in order to meet the growing needs of all countries. Such needs were not

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1/ For the report of the Intergovernmental Group on its fourteenth session, see TD/B/42(1)/3 - TD/B/RBP/106.

limited to promoting the adoption of anti-competition law but related also to its enforcement and to the creation of a competition culture through what is known as "competition advocacy".

6. The conversion of economic policies and the increasing enactment of competition legislation in developing countries and countries in transition suggested that there was common ground for evaluating new horizons in this field. These were linked to the globalization and liberalization processes worldwide as well as to intellectual property, environment, services, unfair trade practices, investment, anti-dumping and consumer protection. Competition legislation was the element that brought coherence to all of them: the time had come to discuss those links and to clarify the interrelations.

7. The **representative of the Secretary-General of UNCTAD** said that the Conference would help to determine the broad directions of the international community's future work in the field of competition policy and restrictive business practices. Since the adoption of the Set, there had been a widespread adoption and implementation by many countries of market-oriented economic reforms and of competition laws following similar basic competition principles. UNCTAD had encouraged this process through the work of the Intergovernmental Group of Experts on Restricted Business Practices, and through technical cooperation activities. Demands for technical cooperation in this area by developing countries and countries in transition had increased considerably. Although several Governments had helped to meet these demands, the human and financial resources available were still insufficient. Given the trend towards globalization and liberalization, and the adoption of the Uruguay Round Agreements (which contained several provisions directly relevant to competition policy), fresh initiatives might now be undertaken to further the implementation of competition principles.

8. The Intergovernmental Group of Experts at its fourteenth session had prepared for consideration by the Third Review Conference a set of proposals, covering improvement of the delivery of technical cooperation, clarification of substantive issues of a fundamental character and further strengthening of common ground among States in the field of competition policy, consensus-building on specific issues and information exchange, consultations and cooperation in enforcement, and the exploration of means to increase participation of competition experts from developing countries, least developed countries and countries in transition in meetings of the Group. Still other proposals, on which agreement had not been reached by the Intergovernmental Group of Experts, included requesting the General Assembly to convene a Fourth Review Conference in the year 2000, changing the title of the Intergovernmental Group of Experts on Restricted Business Practices to that of Intergovernmental Group of Experts on Competition, and issues related to the future of the Set and to the interface between competition and trade policies.

9. The area of competition policy and restrictive business practices was one of the "new and emerging issues" for multilateral trade negotiations. The provisional agenda for UNCTAD IX included the issues of trade and competition policies as well as competition policy and enterprise development, and some agreement might be reached there on the need for - and some main features of - multilateral "rules of the game" in this area. The Review Conference might therefore propose for consideration specific issues in the interface of trade

and competition, taking into account suggestions made in the document entitled "The scope, coverage and enforcement of competition laws and policies and analysis of the provisions of the Uruguay Round Agreements" (TD/RBP/CONF.4/8). In preparing for the Review Conference, regional meetings for African and for Latin American countries on competition policy had been organized by the UNCTAD secretariat in Tunis and in Caracas with the cooperation of host and donor countries and other international organizations. UNCTAD had also participated in a meeting of antimonopoly bodies of countries of the Commonwealth of Independent States in Moldova. The declarations adopted by these meetings might also be taken into consideration by the Review Conference.

Chapter I

REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES:

(a) REVIEW OF 15 YEARS OF APPLICATION AND IMPLEMENTATION OF THE SET;

(b) CONSIDERATION OF PROPOSALS FOR THE IMPROVEMENT AND FURTHER DEVELOPMENT OF THE SET, INCLUDING INTERNATIONAL COOPERATION IN THE FIELD OF CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(Agenda item 8)

10. For its consideration of agenda item 8, the Review Conference had before it the following documents:

"The role of competition policy in economic reforms in developing and other countries" - Revised study by the UNCTAD secretariat (TD/RBP/CONF.4/2)

"Handbook on Restrictive Business Practices Legislation" - Note by the UNCTAD secretariat (TD/RBP/CONF.4/3)

"Review of 15 years of application and implementation of the Set" - Note by the UNCTAD secretariat (TD/RBP/CONF.4/5)

"Restrictive business practices that have an effect in more than one country, in particular developing and other countries, with overall conclusions regarding the issues raised by these cases" - Note by the UNCTAD secretariat (TD/RBP/CONF.4/6)

"Feasibility study of developing a bibliography and database facility on RBPs" (TD/RBP/CONF.4/7)

"The scope, coverage and enforcement of competition laws and policies and analysis of the provisions of the Uruguay Round Agreements relevant to competition policy, including their implications for developing and other countries" - Study by the UNCTAD secretariat (TD/RBP/CONF.4/8)

"Review of All Aspects of the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices" (Submission by Turkey) - Note by the UNCTAD secretariat (TD/B/RBP/CONF.4/9)

"Declaration of Tunis" - Note by the UNCTAD secretariat (TD/RBP/CONF.4/10)

"Conclusions of the meeting on Competition Policies in Latin America and the Caribbean, Caracas, 23-24 October 1995" - Note by the UNCTAD secretariat (TD/RBP/CONF.4/11)

"Declaration and protocol decision of the Interstate Council for Anti-monopoly Policies of the Commonwealth of Independent States and the

Commission for the Protection of Competition of the Republic of Bulgaria" (Kishinev, Republic of Moldova, 7 November 1995) - Note by the UNCTAD secretariat (TD/RBP/CONF.4/12).

11. The **Chief of the Restrictive Business Practices Unit** explained briefly the contents and thrust of the documents that were before the Conference.

12. The representative of **Tunisia** recalled the important reforms undertaken in his country in recent years, with a view to liberalizing the economy and integrating it into the world economy. As part of these reforms, Tunisia had adopted modern competition legislation in 1991 and created autonomous and specialized institutions for its implementation. In April 1995, the competition law had been further reinforced by the adoption of provisions on economic concentrations; the replacement of the Competition Commission by a Council of Competition, with increased autonomy and stronger powers; and prohibition of exclusivity contracts with respect to commercial representation.

13. Efforts to promote competition were also being undertaken by many developing countries and economies in transition. The successful conclusion of the Uruguay Round had reinforced the principles of free trade in the world economy, and placed the issue of competition at the centre of concerns, as the reduction of tariffs and opening of borders increased the risks related to restrictive business practices. Hence the urgent need for competition legislation and implementing authorities at the national level and for cooperation among such authorities of different countries. There was also a need for agreement on basic principles of competition at the international level. In order to be efficient, however, competition authorities of developing countries needed technical cooperation with more experienced countries, including exchange of experience, provision of databases and relevant information, and training on the most efficient investigating techniques.

14. Tunisia, which had assumed the chairmanship of the fourteenth session of the Intergovernmental Group of Experts on Restricted Business Practices, had offered to host a competition workshop for African countries, within the framework of the preparations for the Third Review Conference. In cooperation with UNCTAD and donor countries, the workshop had taken place in Tunis, on 17-18 October 1995. Ten African countries had participated, as well as the World Bank, the OECD, the European Union and France. The workshop had adopted the "Tunis Declaration" (made available to the Conference in TD/RBP/CONF.4/10), which, inter alia, confirmed the importance of competition policy within the process of economic reforms; called upon African countries to strengthen their participation at UNCTAD meetings on competition; invited the Secretary-General of UNCTAD to accord competition policy the place it deserved within UNCTAD's priorities and to allocate the necessary human and financial resources to allow it to respond adequately to the needs of member countries in this field; and confirmed the need for improving cooperation among competition authorities at regional, subregional and international levels. Resources permitting, the Declaration recommended the holding of an annual meeting at the subregional level; establishing a directory of competition laws and institutions for Africa; and reflecting on the feasibility of establishing competition databases and mechanisms.

15. The Tunis Declaration also recommended to the Review Conference to establish a technical cooperation programme on competition for African countries; to reaffirm its commitment to the Set, and hence to UNCTAD's role in the field of competition; to decide to change the name of the Intergovernmental Group of Experts on Restricted Business Practices to that of Intergovernmental Group of Experts on Competition; and to invite the General Assembly to convene a Fourth Review Conference in the year 2000.

16. Finally, in order to support training programmes in this field of competition policy for Africa, he reiterated the offer made by Tunisia in the Tunis Declaration, to make available the facilities of its Training Centre at the DGCCI, as premises for training programmes on competition for African countries.

17. The representative of **China** observed that the analysis of existing problems in the application and implementation of the Set should be pursued further since the situation was far from being ideal, as the objectives of the Set had not yet been attained. Although RBPs had been proliferating in international trade in recent years, the Intergovernmental Group of Experts on Restrictive Business Practices had paid less attention lately to such practices. He warned that, as tariffs and non-tariff barriers were gradually reduced, large firms might consolidate their dominant positions of market power. Such monopolization would seriously affect the foreign trade of the developing countries, resulting in unfair competition in the international market, damaging the interests of developing countries, and offsetting the results of liberalization of international trade. He expressed hope that the international community would further comprehend the significance of the Set and adopt appropriate legislation to control RBPs.

18. Describing the progress and efforts made in the application and implementation of the Set in China in the last 15 years, which aimed at introducing a system of managed market competition among enterprises enjoying increased autonomy, he stated that, in response to the need for fair competition, China had adopted the Law against Unfair Competition and the Law for the Safeguard of Consumers' Rights in 1993. The experience since then had shown that the two Laws were conducive to guaranteeing the healthy development of a socialist market economy, to preventing unfair competition, and to protecting the legal rights of business operators as well as consumers. Nevertheless, a new law on countering monopolies was in preparation.

19. The representative of the **Republic of Korea** stated that the Monopoly Regulation and Fair Trade Act (MEFTA) of the Republic of Korea had been amended at the end of 1994, in order to upgrade the level of Korea's fair trade system in view of the rapid changes in the economic environment, including the launching of the World Trade Organization. As a result, the Korean Fair Trade Commission (KFTC) had strengthened its powers relating to excessive concentration of economic power and abuses of dominant market positions in order to deal effectively with the problems arising from the formation of giant conglomerates - the so-called Chaebols - which was a unique problem in his country. The amendments had also totally abolished the KFTC's prior report system for international contracts, and had raised the ceiling on surcharges drastically, in order to guarantee the effective enforcement of the

law. Moreover, the KFTC had become an independent administrative agency under the supervision of the Prime Minister; in the past, it had been a department of the Ministry of Economic Planning.

20. The KFTC had also made a significant impact in law enforcement in 1994. It had taken corrective measures and imposed surcharges against 122 cases after investigating 22 large business groups that were suspected of unfair trade, such as discrimination between affiliated and non-affiliated companies. It had also strictly regulated cartels and bid riggings, ordering 16 companies to discontinue their collusive activities and make their illegal actions known to the public in the newspapers. The KFTC had also requested the Office of Supply to exclude the construction company that led the bid rigging from participating in future construction projects for six months. Other practices dealt with in 1994 included false advertising, discrimination in price or sale conditions, unfair subcontract trade and unfair bargain sale and sale promotion through a prize contest. At the international level, KFTC had bilateral cooperation with both France and Japan on an annual basis, as well as frequent discussion with the United States of America and Germany.

21. He considered that the Review Conference, as well as the Intergovernmental Group of Experts, should continue to research and deal with new issues linked to competition policy and the regulation of RBPs, and that the UNCTAD secretariat should support and lead broad discussions and technical cooperation on competition policy among member countries. Until now, the consensus on the necessity of international principles on competition policy regulating RBPs among member countries had not been deemed to be mature enough. It was therefore very useful to continue to research areas such as anti-dumping, the inter-firm transactions of multinational companies, technology assistance and information exchange, anti-competitive provisions of international agreements, and interactions between competition and trade. Further work would also be useful in discussing international competition policy, including RBPs regulation, and in activating multilateral discussions in order to maximize a consensus among member countries under the supervision of UNCTAD.

22. The representative of **Morocco** described his country's experience relating to policies for economic liberalization, structural adjustment and promotion of the private sector and of competition, including price liberalization, adhesion to GATT, trade liberalization, privatization, preparation of a draft law on competition and consumer protection, and reform of legislation on monopolies and on investments. The State had become a guarantor of economic liberty, confining itself to monitoring the evolution of the market and sanctioning abuses or lack of transparence. Competition was the business of market operators and the Government intervened only when necessary to re-establish the proper functioning of market mechanisms. Recourse procedures were available where enterprises objected to the conclusions reached by the competition authority or the courts. His Government recognized that publicity was necessary to ensure the success of a newly adopted competition policy, since it required producers, distributors and consumers to accept responsibility for the workings of the market, and it had therefore embarked upon a continuous programme of communication with market operators and with academia. This was particularly important because the application of competition laws was not always precisely established in advance, but varied according to the circumstances, requiring elaboration through case law and

legal writings. However, there were universally accepted principles at the basis of competition policies, such as those contained in the Set of Principles and Rules, which constituted a model to which reference could be made. His Government had chosen competition as one of the tools for reinforcing national enterprises' competitiveness in international trade, as well as for improving the efficiency of production and distribution and the quality of consumer products. At a time when different free trade agreements were being concluded, and the world economy was becoming increasingly globalized, each country should undertake continuous efforts to adjust its policies so as to play its part in the international market. His Government supported the Tunisian delegation's proposal to organize regional workshops on competition between developed and developing countries, such as the workshop for Mediterranean countries to be held in Barcelona at the end of November 1995. This would promote the improvement of economic structures as well as a convergence of conceptions and viewpoints.

23. The representative of the **United States of America** stated that in the 15 years of the existence of the Set of Principles and Rules enormous progress has been made in furthering trade competition, as was demonstrated by the fact that about 60 States had passed competition laws and established competition agencies. In the current review process, his Government attached particular importance to two aspects:

(a) Technical cooperation to assist especially the new competition agencies. The United States would be happy to continue to give assistance in this area. UNCTAD's work was extremely useful particularly as it could undertake work that individual countries could not manage;

(b) Mutual cooperation in competition law enforcement was very important as the world had become small. A good example was the Mutual Assistance Agreements concluded by the United States and other countries, such as Canada.

24. The representative of **Panama** said that the Set had played an important role in the last 15 years in safeguarding competition, the protection of consumers, and cooperation between governmental organizations and the business sector. It remained difficult, however, for small countries to control efficiently the fair exercise of competition from large enterprises operating at an international level, and it was time to consider the possibility of reviewing the Set so as to enable UNCTAD to concentrate on those fundamental aspects of the Set that had not yet been adequately applied. Finally, he stated that in his country the Congress would shortly be discussing a new law on the defence of competition and the protection of the consumer in the framework of the legal mechanisms that were being established under his country's programme of economic liberalization and extension of international trade agreements.

25. The representative of **Germany** appreciated the work performed by UNCTAD and the Intergovernmental Group of Experts since the Second Review Conference and welcomed the fact that many member States had revised their competition laws or had, for the first time, adopted competition legislation. He hoped that over the next few years all the member States would have adopted competition legislation. Addressing those countries which had not yet adopted such laws, he said that competition legislation should not come at the end of an economic reform process aimed at establishing a market-economy system, but

at the beginning of such a process. This was very important, because such laws served as a guiding concept for both the economic and political reform processes.

26. Germany welcomed UNCTAD's efforts since the last Review Conference aimed at advising member States in the adoption and subsequent implementation of competition legislation as well as in setting up the necessary authorities. From its own experience in the context of establishing a market-based system in the former German Democratic Republic, his country was well aware of the important role the institutionalized protection of competition could play in the process of economic restructuring. His country was convinced that a vigorously implemented competition policy was an eminently important part of a country's economic policy which not only yielded good economic results but also ensured adequate supply to consumers. Only two months ago Germany had decided to amend its Competition Act. This would be the sixth revision of the Act since its enactment in 1957. The amendment was particularly aimed at abolishing the partial exemptions from German competition law provided for the banking, insurance and transport sectors.

27. Finally, he stated that Germany would continue to assist and support UNCTAD's work in this area, so that the Intergovernmental Group of Experts could develop further as the main international forum for cooperation and an exchange of experience on competition matters. In particular, Germany would comply with the Set's request for technical assistance in competition matters to developing and other countries. The bilateral technical assistance efforts as well as the multilateral activities undertaken in cooperation with UNCTAD, particularly in the form of seminars, would continue.

28. The representative of **Japan** said that his country had recognized the importance of the Set and made every effort to implement it effectively. In recent years, thanks to a wider recognition of the importance of competition legislation, the subject of technical assistance in the field of competition had acquired greater importance and was considered a necessity. He gave details of some of the technical assistance activities carried out by Japan, including training courses sponsored by Japan and planned to be held annually at least for the next five years. Finally, he described the results of the Fifth Conference on Competition Policy among Asian and Oceanic Countries which had been held in Tokyo in 1994.

29. The representative of **Italy**, commenting on the organization and effectiveness of the yearly meetings of the Intergovernmental Group of Experts, said that one of the objectives of the meetings was to further the spread of knowledge of developing and other countries through increased participation of capital-based experts. In his view, the proposals included in the agreed conclusions of the fourteenth session of the Intergovernmental Group of Experts provided the right foundation for the achievement of the desired results, in particular the proposal to devote two to three days of every session to workshops and informal discussions on substantive issues raised by developing and other countries. The speed and effectiveness with which UNCTAD and the countries interested in participating in these exercises moved to change the way things were done in the yearly Intergovernmental Group meetings would be of paramount importance. In order to increase the effectiveness of the meetings by the participation of more experts from the

capitals, the Intergovernmental Group should provide the appropriate focus to the topics to be discussed and maximize the amount of time devoted to these discussions.

30. The representative of **India** recalled that his country had adopted the "Monopolies and Restrictive Trade Practices Act" (the MRTP Act) in 1969 and established the MRTP Commission - a quasi-judicial body vested with mandatory powers. In 1984, the Act had incorporated provisions relating to unfair trade practices so as to protect the consumers, and in 1986 the Government had also enacted the Consumer Protection Act. In 1991, the Government had decided to take a series of measures in respect of industrial licensing, foreign investment, foreign technology agreements, and the public sector, as a result of which public sector undertakings, government controlled companies, cooperative societies and financial institutions had become subject to the provisions of the Act. The former requirement that certain undertakings should seek prior governmental approval before giving effect to expansion, establishment of new undertakings, amalgamation, merger, or takeover proposals had since been abolished. The size and market share of an undertaking was no more considered as anti-competitive per se. The focus was not on the size or market share of an undertaking but on its trade behaviour and trade practices.

31. In a period of over four years, the Indian economy had witnessed perceptible positive effects from the policy of liberalization and opening up, with the year 1994/95 recording the fastest growth rate.

32. The representative of **Canada** congratulated countries that had passed competition laws. Canada believed in international cooperation, e.g. the Intergovernmental Group of Experts and mutual assistance between competition authorities.

33. In 1986 and 1995, Canada amended its Competition Legislation to Include mergers and dominant positions and Agreement on Notification and Cooperation respectively. Amendments were also initiated to include sharing information with other competition agencies. Hence Canada supported the Intergovernmental Group of Experts process. It also believed in informal workshops.

34. The representative of **Sri Lanka** stated that his Government believed in fair competition without price discrimination, cartels, predatory pricing, the insertion of non-competition clauses in contracts of sale, the imposition of contract terms which unduly affected price setting, selective sales and refusals to deal, exclusive dealings, collusive tendering and similar restrictive business practices. In 1995, 15 years after the adoption of the Set and after considerable market-oriented reforms in the world economy, the Set was still the only fully multilateral instrument on competition policy in existence today. Sri Lanka had followed the guidelines laid down in the Model Law (TD/B/RBP.81/Rev.4) in drafting new legislation. The new legislation, to be entitled "An Act to provide for the establishment of the Commission of Consumer Affairs and Fair Trading (CCAFT) for the promotion of effective competition and protection of consumers; for the regulation of internal trade; for the establishment of a competition tribunal; for the repeal of Consumer Protection Act No. 1 of 1979; and the Fair Trading Commission Act No. 1 of 1987; and for all matters connected therewith or incidental thereto", was still to be placed before the parliamentary consultative committee on Internal and External Trade, Commerce and Food.

35. In accordance with the terms of the Consumer Protection Act No. 1 of 1979, consumer protection in Sri Lanka was administered by the Commission of Internal Trade. The Fair Trading Commission Act No. 1 of 1987 concerned itself with the vital area of competition policy, i.e. monopolies, mergers and anti-competitive practices. The Chairman and the Fair Trading Commission represented the regulatory mechanism established by the statute to administer competition policy in Sri Lanka.

36. Commending UNCTAD's studies and research relating to the provisions of the Set, he expressed support for the following work to be done by UNCTAD in future:

(a) The need for research on the role of competition policy in the strengthening of the economies of developing countries;

(b) Studies on the interface between competition, technological innovation and efficiency;

(c) The treatment of vertical restraints and abuses of dominant positions;

(d) The competition policy treatment of the exercise of intellectual property rights.

UNCTAD's experience on the Set should be drawn upon to formulate a core of universal competition principles as the basis for the work to be done on the international trading system. He added that, if UNCTAD was to draw on the expertise of the nationals of its member countries to develop work on competition policy issues, it was important that better facilities should be made available for the training of specialists in competition law and competition economics.

37. The representative of **Spain** described the developments in the application of his country's legislation in the last five years as well as their links with the European Union rules. He stressed the importance of technical cooperation and gave a summary of the activities which the competition authorities of his country had developed in this field, including those with East European countries, the Russian Federation and Latin American countries. Concerning the latter group of countries, he drew attention to the forthcoming seminar to be organized in Cartagena de Indias, Colombia, in December 1995.

38. The representative of the **Russian Federation** underlined that in the period since the Second United Nations Conference (1990) radical changes had taken place in the international economic and political sphere. Economic reforms had been launched in the Republics of the former Soviet Union, in East European countries and in many developing countries, with special efforts devoted to the development of competition and entrepreneurship. The Russian Antimonopoly Committee, established in 1990, had undertaken a high level of activity during these five years. In 1991, the "Law on competition and limitation of monopolistic activity on commodity markets" had been adopted in the Russian Federation, complemented in May 1995 with different amendments. Both the original and the current versions of this law contained the basic elements of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. Another three laws

connected with competition had been elaborated by the Russian Antimonopoly Committee and adopted in 1995, i.e. the Law on natural monopolies, the Law on advertising, and the Law on State support for small businesses. For the first time, the Antimonopoly Committee had published in 1995 the report on the development of competition in the markets of the Russian Federation and the first issue of the journal "Competitor". In September 1995 the International Conference on Competition Policy in the Countries with Transitional Economies had taken place in Moscow.

39. Finally, she pointed out that so far no technical assistance had been provided to CIS countries in the framework of UNCTAD in the field of competition and she called upon the donors to take appropriate measures for support of competition in the CIS region.

40. The representative of **Bulgaria** said that his country, which had recently adopted competition legislation, was preparing amendments to the law, taking into account UNCTAD's Model Law and the Set of Principles and Rules. His country felt the need for further support from countries that had more experience in this field, in particular through implementation of technical cooperation programmes directed at countries of Central and Eastern Europe. In this connection, he stated that his country had offered to host an international seminar in 1996 on Problems in the Control of Restrictive Business Practices.

41. The representative of **France**, describing the evolution of French competition policy over the previous five years, said that it had built upon the reforms introduced under the French competition law of 1986, which had broken with the tradition of State intervention in the economy. He described the functions and latest activities of the authorities responsible for implementing competition law in France, which not only monitored the behaviour of enterprises and sanctioned breaches of the competition law, but also contributed to the process of economic deregulation and liberalization, in accordance with the principles of European competition law. Special attention had recently been paid to ensuring public monopolies did not abuse their dominant positions, and general principles applicable to all competitive activities of such monopolies had been elaborated. A key function of the Group of Experts was to provide a framework for the exchange of experience among competition authorities, which would encourage the uniform implementation of competition laws and policies and help to overcome the common difficulties faced. His Government would continue to support the discussions and other work of the Group of Experts, as well as bilateral and multilateral technical cooperation activities in this area, thus improving the implementation of the Set. The French competition authorities wished to reinforce their contacts with their counterparts in developing countries and countries in transition, and the Third Review Conference had provided the opportunity to do so. Such a strengthening of contacts was indispensable for the fuller integration of national with international markets and the convergence of national economic policies, necessary for wealth creation in the next century. His delegation would support a recommendation to the General Assembly to convene a Fourth Review Conference in the year 2000.

42. The representative of the **European Commission** commended the secretariat in particular for its work on the Model Law and technical assistance. The founding fathers of the European Union had considered that the creation of a

"common market" free from trade barriers could have been hampered by restrictive business practices applied by enterprises. Hence the adoption of Articles 85 and 86 of the Treaty of Rome, which were in line with the objectives of the Set, namely to ensure that RBPs do not negate benefits that should arise from trade liberalization. A similar challenge was now posed at the level of international trade, as a result of the successful conclusion of the Uruguay Round. The Commission's responsibilities in the field of competition had been progressive, in the sense that, after many years of action against "classical" horizontal and vertical practices, the scope of application of its competition rules had been widened to sectors traditionally exempted, such as telecommunications, transport, energy, postal services, banking, insurance, and liberal professions, and it was also empowered to control concentrations. At the international level, the European Union had also signed a number of cooperation agreements with the United States, to be followed shortly with an agreement with Canada. With EFTA member countries and the EEA, agreements included the application of identical competition rules to member countries. General commercial agreements between the European Union and other countries usually included provision for the adoption of competition laws in those countries. Such cooperation constituted progressive steps towards a multilateralization of competition problems in the long term, to which the Union was favourable. It had therefore requested a group of independent experts to study the strengthening of international cooperation in the area of competition.

43. The representative of **Switzerland** described the recent reforms to the Swiss competition law, which had widened its scope of application and established detailed substantive rules in line with those followed by other European countries or the European Union, as well as new institutional structures and procedural requirements. The powers of the competition authority had also been increased. The revised law was scheduled to enter into force in July 1996.

44. The representative of **Gabon** described the experiences of his country in reforming its economy, culminating in a devaluation of its currency, which had been linked to conditionalities of economic liberalization and better organization of competition. However, the competition law which had been adopted was applied only partially because of the pervasive State intervention in the economy, and it had a few limitations which would necessitate its amendment. The institutional framework adopted in the light of the Uruguay Round Agreements should allow a better transition from State intervention. However, RBPs were prevalent in many sectors. Moreover, privatization should lead to higher market concentration, which would consolidate the economic power of transnational corporations. The Review Conference would allow his delegation to evaluate to what extent competition might have a bad effect upon fragile economies and whether his country would remain a passive spectator when confronted with the rigour of international competition. He urged the Conference to promote greater interpenetration of approaches in the elaboration of principles and rules for controlling RBPs. This would involve the elaboration of draft rules by the secretariat which would be addressed to member States for amendment and adoption, as well as proposals for rules by a member State, adapted to its own circumstances, which would be communicated prior to their adoption to the secretariat for circulation to other States. This would enable Governments to adopt consensual rules avoiding any controversy.

45. He reaffirmed his Government's commitment to the establishment of the competitiveness of its economy and to subscribe to the UNCTAD programme in this area. He appealed to international organizations and industrialized countries to support developing-country Governments in the area of competition, as economic liberalization was difficult to combine with the democratic reforms currently being adopted. Such support might be provided through assistance to competition authorities and through the holding of seminars aimed at all sections of the population. The organization of healthy competition would enable developing countries not only to better regulate their domestic markets but also to have access to international markets.

46. The representative of **Ukraine** said that Ukraine had adopted competition legislation in 1992, i.e. at the very beginning of economic reforms. From the very first days, Ukraine had received great assistance from the governments of the developed countries and international organizations in the sphere of improvement of competition law and the procedure for its implementation in full compliance with the Set of Principles and Rules. Bilateral and multilateral cooperation had also been important for the success of the activity. To ensure due control over the compliance with competition legislation, a special body - the Antimonopoly Committee of Ukraine - had been created in 1992. The authority of the Committee included: (i) putting an end to RBPs; (ii) merger control; (iii) stopping unfair competition. Besides this, the Antimonopoly Committee was authorized to solve the issues which arose in a transition period. Among them, he mentioned the following functions exercised by the Committee:

- control over the privatization process to prevent State monopolies converting into private;

- approving the draft decisions of other State bodies (central and local) so that they did not influence competition negatively. The same procedure was used during the preparation of laws.

47. In case of adoption of some decision which discriminated against entrepreneurs and had a negative influence on competition, the Antimonopoly Committee had the right to start an investigation, and force the party concerned to cease violation of the competition legislation by cancelling the unlawful decision. The Committee also had the possibility to influence the price control mechanism so that such control would not be exercised in the markets, where the Committee was trying to ensure the rapid development of competition.

48. If a monopoly abused its dominant position, the Committee had the right to divide this monopoly into smaller parts. Taking into consideration the fact that a high level of monopolization was still persisting in some areas of the economy, the Antimonopoly Committee of Ukraine was to provide an active policy in the sphere of demonopolization. The final decision on demonopolization of an enterprise was taken by the Intergovernmental Commission on Demonopolization, which included the Head of the Antimonopoly Committee of Ukraine. Finally, the Antimonopoly Committee of Ukraine had an independent statute that restricted the possibility of political influence.

49. The analysis of the documents submitted by the UNCTAD secretariat on a model law showed that the Ukrainian competition legislation in general corresponded to the provisions of the model law. The Parliament of Ukraine was now considering drafts of the laws "On natural monopolies" and "On protection against unfair competition". It was only now that the economy of Ukraine, thanks to the Government's efforts, had finally been acquiring market features. Internal and external trade had been liberalized. The programme of privatization and demonopolization had been realized and more than 40 per cent of State enterprises had become private. The question of joining WTO was also under consideration. Thus the problems of competition protection policy and the prevention of RBPs were of great importance to his country. He therefore considered the Set of Principles and Rules and the work of the Intergovernmental Group of Experts as an important mechanism which helped Ukraine to solve problems on the way to transforming its economy into a market-oriented one.

50. The representative of **Egypt** stated that, with the conclusion of the Uruguay Round and the new international trend of forming economic groupings and blocs, the challenges facing developing countries were ever increasing. In addition, these countries had to deal with liberalization and globalization. Thus, the task of achieving competitiveness had been a difficult one for developing countries, but competition was beginning to bear fruit in many of these countries. This benefit could be lost, however, through unfair competition and restrictive business practices. This was where the Set of Principles and Rules furnished very useful guidelines and principles which encouraged many developing countries, including Egypt, to apply competition laws and policies. The time had now come to devise a more effective mechanism, with the help of UNCTAD, for the control of RBPs internationally and to work on the formulation of a more legally binding set of rules and principles in the area of RBPs.

51. Another issue which was equally important was that of enabling developing countries to enforce competition laws and to achieve capacity building in the area of detecting and investigating RBPs. This objective could be fulfilled only through international and bilateral cooperation. UNCTAD could play an important role in coordinating such cooperation and exploring different avenues for the mobilization of required resources.

52. The representative of **Côte d'Ivoire** stated that his country had adopted a competition law in 1991 and had established a Competition Commission, and in this respect had received considerable support from France, which had offered to train its competition officials. His country attached great importance to competition policy, and therefore called upon the Review Conference to take into account the conclusions of the African Regional Workshop in Tunis. Developing countries were particularly vulnerable to the adverse effects of restrictive business practices, especially in the context of trade liberalization - where dumping practices were a particular concern. His country had eliminated tariff and non-tariff barriers as well as monopolies as a result of a policy of privatization of public enterprises. The Competition Commission also promoted consumer interests and in this respect encouraged the emergence of consumer associations.

53. The representative of the **Dominican Republic** recalled the important reforms achieved by the Latin American and Caribbean economies, which had previously been based on import substitution policies. In the last 15 years, the world had witnessed unprecedented changes and economic reforms, based on the creation and consolidation of markets in which smooth functioning was ensured by competition. She highlighted the importance of competition policy and legislation for Latin American countries, and the need to strengthen such policies, as indicated in the conclusions of the competition meeting which had recently taken place in Caracas (Venezuela). It was essential: (a) to consolidate competition policies at the national level; (b) to ensure that such policies were implemented for an adequate functioning of integration processes; (c) to study the links between competition law and consumer protection, unfair trade practices, deregulation and privatization of public services, intellectual property, anti-dumping measures, and rules of origin. She also stressed the need to provide UNCTAD with adequate human and financial resources in order to face the increasing technical assistance needs of Latin American and Caribbean countries.

54. The representative of **Malta** said that during the fourteenth session of the Intergovernmental Group of Experts on Restrictive Business Practices, he had the opportunity to refer to the mechanism envisaged in the Maltese Competition Act which had come into force on 1 February 1995. He explained that the Office for Fair Competition was currently in the process of issuing block exemptions, and was striving to further sensitize public opinion, especially the business community.

55. The Maltese legislation on competition envisaged a transitory period of 18 months for "old" agreements to be brought in line with its provisions. The Office for Fair Competition was trying to make use of this transitory period, which ended in July 1996, to acquire further experience on the control of anti-competitive behaviour. To this effect, various seminars had been projected for 1996 with the participation of foreign technical experts on competition. The Office was looking forward to closer cooperation with other Competition authorities in other countries and hoped to benefit from their expertise. There was no doubt that UNCTAD, having a wealth of experience on the control of restrictive business practices, was an important forum for all countries and international associations, especially countries like Malta which had just adopted a competition legislation.

56. The representative of **Morocco** said that most developing countries had accepted that adherence to the doctrine of liberalism, efficiency and competitiveness provided the best means for development, and had also adopted or were adopting competition laws. An integrated framework of competition law and policy was necessary to provide the rules and incentives to develop a modern and efficient economy that was able to play a role in the global market. He hoped that the reliance upon liberalism and comparative advantage would not be rendered illusory by market distortions, such as those caused by the application of trade policies or by inappropriate or fluctuating exchange rates. In order for a competition law to be successfully implemented and thus have tangible effects on trade flows and economic growth in a developing country, its economic and social structures needed to have the capacity to absorb the new competition culture, which meant that the economy should be as open and liberal as possible in all directions, with effective reciprocity in all markets and economic spaces. He suggested that the Conference reflect on

this point, as well as on: the relationship between privatization and competition; the need for legislation on market concentration and mergers since international competition required larger size; whether the basic concepts of competition law should be precisely defined, taking into account the need for adaptation to circumstances in different countries; whether, in the initial stages of implementing a competition law, jurisdiction should be given to the general court system despite its lack of familiarity with this area; and the degree of discretion which competition authorities should have, particularly during the process of economic transition, to regulate markets and prices in exceptional circumstances. He also proposed the creation of working groups to promote convergence of approaches on competition which went beyond the mechanical and formal aspects of undertakings in this area. Consultations should also be held in regional and international forums among experts to elaborate a universal doctrine of competition. An international consensus on minimum basic competition principles would be an important harmonizing and integrating factor. Finally, he said that the workshop proposed by the Tunisian delegation for Mediterranean countries on "Competition in an international environment favourable to competitiveness" could be held in Morocco in April 1996 or at some other date to be chosen by the Conference.

57. The representative of the **United Kingdom** observed that many countries had adopted competition laws through the assistance of UNCTAD, and his country attached great importance to technical assistance. The Office of Fair Trading had organized numerous training seminars, and was undertaking in-depth studies in such areas as market definition and entry barriers. In 1996, a study on vertical restraints would be carried out.

58. The representative of **Sweden** said that it spoke well for UNCTAD's assistance that an ever-growing number of countries were passing competition legislation. Sweden had itself provided technical assistance, especially to the Baltic States, Poland and Romania. In 1993, Sweden had amended its competition legislation in preparation for its membership of the European Union, which it had joined in 1995. For example, deregulation of utilities like the postal sector and telecommunications had been undertaken. However, his authorities were concerned at the continued abuse of dominant positions by former monopolies.

59. The representative of the **World Bank** said that the Intergovernmental Group of Experts on Restrictive Business Practices was a forum of vital importance and the World Bank valued its cooperation with UNCTAD in this area. Currently, the World Bank was engaged in preparing an operational manual - a step-by-step guide in the area of competition in cooperation with the OECD, the United States of America, France and Canada - and he formally invited UNCTAD to participate in this exercise.

60. The representative of **Brazil** outlined the profound market-oriented economic reforms undertaken by his country, the paradigms of which were competitivity and efficiency. The creation of economic blocs were forcing countries to revise their policies of development. In this context, the restructuring of the Brazilian economy was being conducted by increasing the competitivity of enterprises through market liberalization, privatization and deregulation of many public utilities, as well as by strict action in defence of competition. It was important to note that, in this process, public

monopolies should not be transformed into private monopolies which continued to enjoy captive markets where competition would be absent. It was essential to avoid the creation of concentrated sectors achieving control of "natural" monopolies. As for the role of competition policy as an instrument of development, he considered that consultation and cooperation mechanisms among competition authorities, as agreed under the Set, was an essential element if one wished to achieve progress towards increased convergence of competition laws and policies. Technical cooperation, as had been emphasized in the conclusions of the Caracas meeting of Latin American and Caribbean countries as well as in the Declaration of Tunis, was also essential in this respect.

61. The representative of **Algeria** recalled that UNCTAD IX would be discussing issues linked to competition, and the role the Intergovernmental Group of Experts on Restrictive Business Practices should play in the area of RBPs and competition policy in the light of the Uruguay Round Agreements. The Model Law was, in his view, very useful for helping countries to adopt appropriate legislation to control RBPs and to adapt their laws to the new realities of the global economy. The Set of Principles and Rules should contribute to strengthening international cooperation in this area and encourage transparency and fairness of business practices at the international level. UNCTAD also had a very important role to play in technical assistance in this area, and his delegation supported the proposal to organize regional and subregional meetings to allow developing countries to consult and exchange relevant experiences. He also supported the proposal to change the title of the Intergovernmental Group of Experts on Restrictive Business Practices to Intergovernmental Group of Experts on Competition.

62. Algeria had undertaken important economic reforms in recent years, including structural adjustment reforms and trade liberalization, to establish the mechanisms necessary for the transition from a planned to a market economy and to encourage competitiveness. New legislation had also been adopted on investment, privatization and competition. The new competition law aimed at reinforcing the legislative framework for economic reform, allowing liberalization to take place under the right conditions, promoting transparency and fairness in business practices, and sanctioning any infraction of competition rules. He described the principles and main provisions of the Algerian competition law, as well as the organization, functions and powers of the Conseil de la Concurrence, which was responsible for implementing the law.

63. The representative of **Zambia** stated that the Model Law on restrictive business practices prepared by the UNCTAD secretariat was useful in drafting her country's competition legislation. From the time of the independence of Zambia, the Government had embarked on building a planned economy dominated by State enterprises. However, since 1991, when the present Government had come to power, the country had been implementing a structural adjustment programme financed by the World Bank and the donor community. The following economic measures had been taken: trade liberalization; withdrawal of subsidies and deregulation of prices of major commodities; introduction of legislation to promote private-sector participation in the economy, such as the Privatization Act; introduction of a stock exchange and adoption of a Securities Act, and the adoption of the Competition and Fair Trading Act. The latter Act provided for the establishment of a Competition Commission - hence the need for

technical assistance to train personnel who would be charged with enforcement of the Law. The technical assistance could also take the form of seminars and workshops.

64. The representative of **Sri Lanka** stated that technical assistance was of paramount importance especially for developing countries in their efforts to establish effective competition agencies. Recalling the statement he had made at the previous meeting, he reiterated that his country was working on the establishment of a Consumer Protection and Fair Trading Commission.

65. The representative of the **European Commission** stated that, following the conclusion of the Uruguay Round, an independent group of experts entitled the Van Miert Commission had been appointed to look into agreements, in particular those with the United States of America, EFTA, Central Europe and the Mediterranean countries. The task was to come up with a minimum set of principles and arbitration arrangements. The group had made several recommendations, of which the most relevant were:

- The need for effective enforcement of competition rules;
- The need for provision of technical assistance, especially for developing countries;
- The deepening of bilateral relations and exchange of information;
- Dispute settlement mechanisms.

66. The Head of the Russian Antimonopoly Committee, speaking on behalf of the **Russian Federation**, recalled the main legal and enforcement activities in the field of competition in the Russian Federation. Special attention was paid to the fact that the appropriate legal basis had been created in a short time-period for the protection of competition and consumer rights, as well as for the demonopolization of the economy. UNCTAD's activity in the establishment of multilaterally agreed principles and rules for the control of restrictive business practices had great importance for the countries with a transitional economy from the point of view of creating the appropriate legal basis in this field. As for cooperation among CIS countries in the field of competition, this cooperation was undertaken in the framework of the Intergovernmental Council for Competition Policy of the CIS countries, which had been established in 1994 in accordance with the intergovernmental Agreement. Bulgaria also participated in the activity of the Council. During the past two years a number of important measures had been taken by CIS members, including the elaboration of two Model Laws - one "On protection of competition" and the other "On protection of consumer rights". At its recent (fifth) session (6-7 November 1995, in Kishinev), the Intergovernmental Council had adopted the Declaration which, inter alia, called upon UNCTAD to strengthen the technical assistance to CIS countries in the field of competition, and in particular to provide resources for execution and financing of the regional project "The development and protection of the free competition in CIS countries". The common problems of the CIS countries and their active cooperation in the competition sphere ensured the high effectiveness of the assistance to be provided on a regional basis.

67. The representative of the **Organisation for Economic Cooperation and Development** (OECD) stated that a revised Council Recommendation concerning cooperation between member countries on anti-competitive practices affecting international trade had been adopted in July 1995 to prevent anti-competitive behaviour in international transactions. Copies of this document (C(95)130/FINAL) were available in the conference room. Its main provisions included:

- Notification;
- Exchange of information and coordination of action in the process of investigations, including mergers when taking place in more than one country, as well as consultation and conciliation procedures;
- Confidentiality of information.

Annexed to the revised Council Recommendation were important guiding principles, setting out detailed procedures for notifying and principles of confidentiality in the sharing of information.

68. The representative of **Italy** stated that his country had established two independent regulatory authorities in the area of utilities. The major objectives were to ensure competition, efficiency and quality. The relationship of these authorities to the Antitrust Authority was through notification and the provision of advisory opinions by the Authority in contentious cases. In addition, decisions by the authorities could be referred to administrative courts.

69. The representative of **Consumers International** recalled the prime role of consumer welfare in competition policy. However, her organization considered that competition authorities should interact more than they had done so far with consumer organizations and take greater account of their viewpoints in the application of competition policy. Competition policy should also be propagated to a wider audience, and UNCTAD and its member Governments could undertake training seminars for non-governmental organizations and enterprises, thus broadening the constituency for effective and consumer-friendly competition law. She supported the proposal to develop a database: a similar proposal had been made by a conference on consumers and competition law jointly organized in Delhi by her organization and a local member organization, which had been supported and attended by UNCTAD. She also supported work by UNCTAD on the interaction between competition and trade law, particularly anti-dumping laws. Her organization had also expressed support for work on an international competition code under the auspices of the World Trade Organization, stressing the vital role of UNCTAD and OECD in this process. The work on the Set of Principles and Rules could help to promote a consensus on this issue among WTO members.

70. The representative of **Ukraine** underlined that his country was engaged in major work in the sphere of demonopolization. For this purpose some steps were being taken in the direction of economic liberalization and compulsory restructuring. In particular, some important changes had affected the natural monopoly spheres. For example, an independent regulatory body had been established in the electricity sector and some necessary measures had been taken to make the wholesale electricity market function competitively. At the same time, the Antimonopoly Committee retained the authority to prevent RBPs in this sphere and, in a number of cases, was serving as an arbiter between the regulatory body and enterprises. The same reforms were taking place in the spheres of transport and communication. These reforms aimed to separate network enterprises from the enterprises which were acting in the interlinked markets.

Chapter II

ADOPTION OF PROPOSALS FOR THE IMPROVEMENT AND FURTHER DEVELOPMENT OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES, INCLUDING INTERNATIONAL COOPERATION IN THIS FIELD

(Agenda item 10)

71. At its 5th (closing) meeting, on 21 November 1995, the Conference adopted the draft resolution contained in TD/RBP/CONF.4/L.2, having first taken note of the list of documents to be inserted in paragraph 1 of the text. 2/

Statements made upon the adoption of the resolution

72. The representative of the **United States of America** stated that his country was pleased to join the consensus reached overall on the resolution just adopted by the Conference. He wished to make clear, however, that his delegation had a reservation concerning paragraph 15 of the resolution. In his view, the question of whether the General Assembly should convene a Fourth Review Conference in the year 2000 was one that depended in part on the results of UNCTAD IX. A decision on this matter should therefore not be taken by the General Assembly before UNCTAD IX. He also observed that the work programme set out in the resolution should be carried out within available resources.

73. The spokesman for the **African Group** (Egypt) considered that the resolution adopted by the Review Conference addressed the main concerns of all participants, and that the success of the Conference should enable the Intergovernmental Group of Experts to pursue its work towards the full implementation of the Set by all countries and the strengthening of the common ground identified among various countries in the area of competition law and policies. He hoped this would be a prelude to reaching consensus on a legally binding multilateral discipline on competition. Emphasizing the strong link between competition and trade policy, he trusted that the Intergovernmental Group of Experts would soon begin its work in this area, especially on its impact on developing countries.

74. The representative of **Consumers International** stressed the importance attached by her organization to the need for UNCTAD to commence work on the relationship between trade and competition policies, since UNCTAD was the best placed of all organizations for the task of consensus-building in this area. She regretted, therefore, that in its resolution, the Third Review Conference had not requested UNCTAD to pursue this matter, which was of concern to all countries.

75. The representative of the **Russian Federation** said that, although the resolution just adopted did not fully reflect the views of countries in transition and developing countries, she hoped it would be a good basis for future work by the Intergovernmental Group of Experts. The work of the

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2/ The final text of the resolution as adopted was subsequently circulated in TD/RBP/CONF.4/14. For the resolution, see annex I below.

Intergovernmental Group of Experts should not only involve exchanges of experience on competition law and policy, but should also encourage transparency as regards international trade. UNCTAD's unique structure and its universal mission would enable the Intergovernmental Group of Experts to build a consensus and to continue work aimed at coordinating positions which in the end would result in constituting an agreement on competition policy for adoption within the framework of WTO.

Closing statements

76. The **Vice-President of the Conference** (France), speaking on behalf of the President, who was unable to attend the closing meeting, expressed his appreciation at the outcome of the Conference. The discussions had shown the great commitment of all participating countries to the Set of Principles and Rules. This commitment was also demonstrated by the unprecedented participation in the Conference of experts specialized in the area of competition law and policy from the capitals of over 43 countries. He hoped that even more experts would participate in future sessions of the Group of Experts. The participating countries had wished to maintain the Set in its current formulation, so as to increase still more the number of countries with rules governing competition law and policy, and had agreed that competition policy was an essential factor for the integration of national markets into regional and global markets. There had also been a consensus, subject to the reservation made by the United States, that a Fourth Review Conference should be held in the year 2000, which augured well for the future work of the Group. The resolution adopted by the Third Review Conference had laid down a very specific work programme for the Intergovernmental Group of Experts and had inaugurated some technical changes in the Group's working methods, particularly by establishing that at least three days should be devoted to informal consultations on technical issues. The resolution had also recommended that the General Assembly change the Group's title to Intergovernmental Group of Experts on Competition Law and Policy, a title similar to that of the equivalent OECD expert group, and which was in line with the nature of the Group's work and with the changes taking place in this area in the real world. The Review Conference would thus send a strong signal to UNCTAD IX, for the Intergovernmental Group was the only universal forum providing the opportunity to work in a useful and efficient manner on the development of the tools and institutions necessary for the implementation of competition policy in the context of globalization. He therefore hoped that the General Assembly and UNCTAD IX, each within its competence, would provide a stimulus to the Group's work.

77. The representative of **Argentina** recalled the main points of the resolution which had been adopted, which included important areas of cooperation, studies and a decision to include three days of informal consultations within the forthcoming sessions of the Intergovernmental Group of Experts. This work would be highly useful, in view of the rapid changes that had occurred in the field of competition legislation. He also commended the decision to request the General Assembly to convene a Fourth Review Conference in the year 2000. This would give a special momentum to the work of the Intergovernmental Group of Experts, as competition policy was a key element for all countries. The Uruguay Round had given a strong impulse to the liberalization of markets, and one of the main themes for the future would be the reduction of private barriers to free trade. In connection with the

programme of work on competition, he drew attention to the informal meetings held recently between the Secretary-General of UNCTAD and the Director-General of WTO, which would undoubtedly improve cooperation between the two organizations and serve the cause of development.

78. The representative of **Germany** said that the Conference had shown how competition had grown, as evidenced by the adoption of competition legislation by many countries. Although much work remained to be done, he was optimistic for the future and looked forward to the Fourth Review Conference in the year 2000.

79. The representative of **France** commended the high quality of the work done in the framework of the Intergovernmental Group of Experts on Restricted Business Practices and expressed particular satisfaction at the large number of competition experts and high-level officials from capitals, including from developing countries and from Africa. This was a clear indication that the work on competition was extremely useful and effective. His delegation was of the view that UNCTAD IX would gladly reaffirm the continuation of UNCTAD's work programme on competition, which helped developing countries in their endeavours to build efficient market economies that would be better integrated in the international trading system.

80. The representative of **Bulgaria**, in commending the resolution, took note with appreciation of UNCTAD's readiness to offer technical assistance to countries in transition in the field of competition policy. Competition policy would in his view be one of the priority areas for UNCTAD IX and beyond.

81. The representative of **Gabon** expressed his delegation's satisfaction at the results of the Conference and hoped that the resolution adopted would serve as a basis for a new equilibrium in international trade relations. His delegation also endorsed the call for a Fourth Review Conference in the year 2000.

82. The representative of **Belgium** also expressed her delegation's support for the resolution just adopted.

83. The representative of **Tunisia** expressed satisfaction at the increasing worldwide interest in competition policy, as indicated by the number of experts participating in the Review Conference and in the Group of Experts, which dealt with very important technical questions. Competition policy played an important part in economic reforms, particularly in enhancing competitiveness and consumer welfare, and he felt that technical cooperation efforts should be strengthened to implement competition legislation. It was necessary to maintain and reinforce the impulses provided by the workshops in Caracas and Tunis to the regional approach to technical cooperation. On the one hand, such cooperation enabled exchange of experiences among the competent authorities of countries within different regions, and thus the progressive convergence of competition rules within those regions. On the other hand, such regional convergence and strengthening of cooperative linkages facilitated convergence and cooperation at the multilateral level. His delegation noted with great interest the emphasis on informal consultations

and workshops envisaged for future sessions of the Group. He proposed as subjects for future consultations the role of competition authorities in the process of liberalization, how to promote the spirit of competition in economic actors in the transition process towards an open economy, and the treatment of exclusive distribution contracts.

84. The spokesman for the **Latin American and Caribbean Group** (Chile) also expressed great satisfaction at the resolution adopted by the Conference and commended the usefulness of the Intergovernmental Group of Experts for those countries which had adopted, or were considering adopting, competition legislation. He agreed that there was a need for a database on competition issues for member countries of the Latin American and Caribbean Group.

85. The representative of **China** stated that his country welcomed the results of the Conference as they were conducive to future work, especially on technical assistance. However, there was need for more work to be done, in particular in-depth studies on restrictive business practices generally.

86. The representative of the **Russian Federation** said that this had been an extremely useful Conference, with serious discussion on the problems facing economies in transition. He recalled that, on 7 November 1995, a joint session of the CIS in Kishinev (Republic of Moldova) had adopted a Declaration and Protocol Decision of the Interstate Council for Antimonopoly Policies of the CIS and the Commission for the Protection of Competition of the Republic of Bulgaria (circulated to the Conference in TD/RBP/CONF.4/12), which had provided a number of points that were agreed upon in the resolution just adopted by the Conference. The Kishinev meeting had also achieved progress on drafting a comprehensive technical cooperation project for countries of the region. He felt that the resolution adopted by the Conference was a very useful document which reflected in a balanced way the activities of the Intergovernmental Group of Experts and the issues that had to be taken up in its future work. He hoped that the importance of the work on competition would be reflected in the results of UNCTAD IX and his delegation would propose that the activities of the Intergovernmental Group should be retained on the agenda of UNCTAD IX. Finally, he trusted that regular contacts between the UNCTAD and WTO secretariats would avoid duplication of work while strengthening the complementarity of the two organizations.

87. The representative of **Morocco** said that UNCTAD was the appropriate forum for a useful debate in the area of competition law and policy, which was essential to the process of deregulation and globalization which had spread throughout the world since 1990. The resolution adopted set the basis for building a convergence of views in this area on the eve of the twenty-first century.

88. The representative of **Malta** expressed his delegation's satisfaction at the fruitful outcome of the Review Conference and at the consensus reached on the resolution just adopted.

89. The representative of **Panama** stressed the importance which her country attached to the future work of UNCTAD in this area of work, especially technical assistance. Technical assistance was important not only for her country but for the whole Central American subregion which had not yet advanced very far in the area of competition.

90. The representative of **Zambia** stated that she welcomed the consensus resolution adopted by the Conference, which contained very important provisions, in particular on regional cooperation and technical assistance. Her country was in the process of establishing a competition commission and therefore technical assistance was vital, especially for training competition officials.

Chapter III

ORGANIZATIONAL MATTERS

A. Opening of the Conference

91. The Third United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was opened on 13 November 1995 by Mr. Henry Emden (United Kingdom of Great Britain and Northern Ireland), who had been President of the Second Review Conference.

B. Election of the President
(Agenda item 2)

92. At its 1st plenary meeting, on 13 November 1995, the Conference elected Mr. Eduardo Garmendia (Venezuela) to serve as President of the Conference.

C. Election of other officers
(Agenda item 6)

93. At its 1st and 2nd meetings, the Conference completed the election of its Bureau as follows:

Vice-Presidents:	Mr. Yuri Afanassiev	(Russian Federation)
	Mr. Rodrigo Asenjo Zeyen	(Chile)
	Mr. Pierre E.J. Brooks	(South Africa)
	Mr. Arshad Farrooq	(Pakistan)
	Mr. Lütz Gärtner	(Germany)
	Mr. Martin Gajdos	(Slovakia)
	Mr. Edward T. Hand	(United States of America)
	Mr. Leonardo Kam Binns	(Panama)
	Mr. Ali Kerfali	(Morocco)
	Mr. Barnabe Mebaley Mba	(Gabon)
	Mr. Vasil Milkov	(Bulgaria)
	Mr. B.J. Pathirana	(Sri Lanka)
	Mr. Erik Sahlin	(Sweden)
	Mr. François Souty	(France)
	Mr. Toshio Tsunozaki	(Japan)
	Mr. Edward Whitehorn	(United Kingdom of Great Britain and Northern Ireland)
	Mr. Tang Yufeng	(China)
Rapporteur:	Mr. Supramaniam Sinnasamy	(Malaysia)

94. The Conference also decided that the regional group coordinators and China would be associated with the work of the Bureau.

D. Adoption of the rules of procedure
(Agenda item 3)

95. At its 1st meeting, the Conference adopted without change the provisional rules of procedure approved by the Intergovernmental Group of Experts on Restrictive Business Practices at its fourteenth session (TD/B/RBP/70), circulated to the Conference under cover of TD/RBP/CONF.4/4.

E. Adoption of the agenda
(Agenda item 4)

96. At the same meeting, the Conference adopted the provisional agenda circulated in TD/RBP/CONF.4/1. Accordingly, the agenda for the Third Review Conference read as follows:

1. Opening of the Conference

2. Election of the President

3. Adoption of the rules of procedure

4. Adoption of the agenda

5. Organization of the work of the Conference

6. Election of other officers

7. Credentials:
   (a) Appointment of a Credentials Committee
   (b) Report of the Credentials Committee

8. Review of all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices:

   (a) Review of 15 years of application and implementation of the Set;

   (b) Consideration of proposals for the improvement and further development of the Set, including international cooperation in the field of control of restrictive business practices.

9. Other business

10. Adoption of proposals for the improvement and further development of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, including international cooperation in this field

11. Adoption of the report of the Conference.

F. Organization of the work of the Conference
(Agenda item 5)

97. At its 1st meeting, the Conference decided, in accordance with rule 44 of its rules of procedure, to establish a Negotiating Group for the detailed consideration of agenda item 8 (b) ("Consideration of proposals for the improvement and further development of the Set, including international cooperation in the field of control of restrictive business practices").

98. In accordance with rule 45 of the rules of procedure, the Conference agreed that the President of the Conference should also be the Chairman of the Negotiating Group.

G. Credentials
(Agenda item 7)

Appointment of a Credentials Committee (item 7 (a))

99. At its 1st meeting, the Conference, acting in accordance with rule 5 of its rules of procedure, appointed a Credentials Committee, the composition of which was based on the Credentials Committee of the fiftieth session of the United Nations General Assembly, namely: five members from the Group of 77; two from Group B; one from Group D; and China.

100. The Conference agreed that the Credentials Committee should elect as its Presiding Officer a representative of the country chairing the Credentials Committee of the current session of the General Assembly. The Conference further agreed that if any country member of the Credentials Committee in the General Assembly was not represented in the Review Conference, the regional group to which that country belonged would designate another country to replace it.

101. Accordingly, the members of the Credentials Committee were as follows:

China; Nepal; Nigeria; Russian Federation; South Africa; Spain; Trinidad and Tobago (chairmanship); United States of America; and Venezuela.

Report of the Credentials Committee (item 7 (b))

102. At its 5th (closing) meeting, on 21 November 1995, the Conference adopted the report of the Committee on Credentials (TD/RBP/CONF.4/13).

H. Adoption of the report of the Conference
(Agenda item 11)

103. Also at its closing meeting, the Conference adopted the draft report on its session (TD/RBP/CONF.4/L.1 and Add.1), with a number of amendments, and authorized the Rapporteur to complete the final report, as appropriate, for presentation to the United Nations General Assembly.

Annex I

RESOLUTION ADOPTED BY THE REVIEW CONFERENCE*

The Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Having reviewed all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, 15 years after its adoption, and recognizing the positive contribution made by the Set and by Intergovernmental Group of Experts on Restrictive Business Practices to the promotion of competition,

Noting especially the radical changes which took place in the developing countries and countries in transition in recent years towards liberalization of economies and development of competition,

Reaffirming as well the resolution on Strengthening the Implementation of the Set adopted by the Second United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Taking note of the decision taken by UNCTAD VIII that "UNCTAD should pursue, through the Intergovernmental Group of Experts on Restrictive Business Practices, its work with regard to policies and rules for the control of RBPs in order to encourage competition, to promote the proper functioning of markets and efficient resource allocation, and to bring about further liberalization of international trade",

Noting that the agreed annotations to the provisional agenda for the ninth session of the United Nations Conference on Trade and Development provide that the Conference should cover the area of the interrelationship between trade and competition policy, and that policy measures will be considered in an integrated manner covering the area of the interrelationship between competition and enterprise development,

Taking into account the proposals contained in the agreed conclusions adopted by the Intergovernmental Group of Experts on Restrictive Business Practices at its fourteenth session, as well as the recommendations made by the regional African Workshop on Competition Policy, the meeting on Competition Policy in Latin America and the Caribbean, and the fifth session of the Interstate Council for Anti-monopoly Policies of the Commonwealth of Independent States (CIS) in preparation for the Third Review Conference, and expressing its appreciation to all Governments and organizations contributing to their success,

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* Adopted by the Review Conference at its 5th (closing) meeting, on 21 November 1995.

1. Takes note with appreciation of the documentation prepared by the UNCTAD secretariat for the Conference and requests the secretariat to revise documents TD/RBP/CONF.4/2, TD/RBP/CONF.4/6, TD/RBP/CONF.4/7, TD/RBP/CONF.4/8, TD/B/RBP/81/Rev.4, and UNCTAD/ITD/15, in the light of comments by member States made at the Conference or to be sent in writing by 31 January 1996 for submission to the next session of the Intergovernmental Group of Experts;

2. Takes note in particular of the Model Law and its commentary as a guide to the competition approaches followed on various points by different countries. It should be understood that the Model Law and its commentary do not affect the discretion of countries to choose policies considered appropriate for themselves, and that they should be periodically reviewed in the light of reforms and trends at the national and regional levels;

3. Requests the UNCTAD secretariat to revise periodically the commentary to the Model Law in the light of legislative developments and comments made by member States for consideration by future sessions of the Intergovernmental Group of Experts, and to disseminate widely the Model Law and its commentary as revised;

4. Further requests the UNCTAD secretariat, taking into account increased needs for technical cooperation and technical assistance in developing countries, countries in transition and other countries, to carry out a review of technical cooperation activities undertaken by UNCTAD and other international organizations, as well as States bilaterally, with a view to strengthening its ability to provide technical assistance for capacity building in the area of competition law and policy by:

(a) Encouraging providers and recipients of technical cooperation to take into account the results of the substantive work done by UNCTAD in the above-mentioned areas in determining the focus of their cooperation activities;

(b) Encouraging developing countries and countries in transition to identify specific competition law and policy areas and issues which they would wish to see receive priority attention in the implementation of technical cooperation activities;

(c) Identifying common problems encountered in the competition law and policy area which might receive attention in regional and subregional seminars;

(d) Enhancing cost-effectiveness, complementarity and collaboration among providers and recipients of technical cooperation, both in terms of the geographical focus of technical cooperation activities, taking into account the special needs of African countries, and the nature of cooperation undertaken;

(e) Preparation and execution of national, regional and subregional projects on technical cooperation and training in the field of competition law and policy, taking special account of those countries, or subregions which have not received such assistance so far, especially in the field of lawdrafting and staff training, and enforcement capacity;

(f) Mobilizing resources and widening the search for potential donors for UNCTAD technical cooperation in this area;

and to prepare a report thereon for submission for consideration by Intergovernmental Group of Experts sessions;

5. Calls upon Governments to make efforts to increase the participation of experts/representatives particularly from developing countries, least developed countries and countries in transition, including those countries which have not yet adopted competition policy or laws, in future sessions of the Intergovernmental Group of Experts, and in the Fourth Review Conference if approved by the General Assembly;

6. Urges intergovernmental organizations and financing programmes and agencies to provide resources for the activities mentioned in paragraphs 4 and 5 above;

7. Appeals to States, in particular developed countries, to increase voluntary financial contributions and to provide necessary expertise for the implementation of the activities mentioned in paragraphs 4 and 5 above;

8. Further requests the UNCTAD secretariat to prepare a draft outline of a possible study on empirical evidence of the benefits (including benefits for consumers) to be gained by developing and least developed countries and countries in transition from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development, for submission to the next session of the Intergovernmental Group of Experts;

9. Decides that:

(a) Future Intergovernmental Group of Experts sessions should include at least three days for informal multilateral consultations among participants on competition law and policy issues with special focus on practical cases. Countries wishing to participate in the consultations are encouraged to give advance notice of their proposed RBP issues, in order to maximize the opportunities for exchange of views and experiences with member countries. After an understanding is reached as to the subject-matter of the consultations, a detailed agenda and timetable for the consultations should be disseminated by the secretariat at least one month in advance of the session of the Intergovernmental Group of Experts so as to permit delegations from all member States to participate in the informal consultations, and the likelihood of participation in the consultations by competition experts from all regions should be ascertained;

(b) As part of such consultations, the Intergovernmental Group of Experts should undertake a comprehensive informal exchange of views and experiences of several developed and other interested countries on issues relating to cases concerning RBPs and other issues relevant to competition which have been raised by developing or other countries;

(c) Also as part of such consultations, the Intergovernmental Group of Experts should organize several small workshops at which the secretariat and a few experts from developed and other countries would exchange informally views

and experiences with developing and other countries wishing to take advantage of such an exchange of views for the purpose of developing their analysis of specific restrictive business practices issues in a given country;

10. Calls upon States to strive to implement all provisions of the Set to ensure its effective application;

11. Decides that, in the light of the strong worldwide trend towards the adoption or reform of competition laws and the development of national competition laws and policies over the period since the Set was adopted, the Intergovernmental Group of Experts should embark on an exercise, upon request from member States and in collaboration with national and regional competition law and policy authorities, to map out and further strengthen common ground among States in the area of competition law and policy in identifying restrictive business practices that affect the economic development of countries. In this context, the focus of the exercise, inter alia, should be on:

(a) Identifying "common ground", i.e. broad similarities in the approaches followed on different competition law and policy questions by governments;

(b) Shedding light and encouraging exchanges of views in those areas where the identification of "common ground" is more difficult, for example where there are differences among economic theories, or among competition laws or policies, such as:

(i) The role of competition law and policy in the strengthening and improvement of the economies of developing and other countries and, in particular, the development of the business community;

(ii) Taking into account economic globalization and liberalization of the economies of developing and other countries, to identify appropriate measures to help those countries that might be hampered by RBPs;

(iii) The interface between competition law and policy, technological innovation and efficiency;

(iv) The competition law and policy treatment of vertical restraints and abuses of dominant positions;

(v) The competition policy treatment of the exercise of intellectual property rights (IPRs) and of licences of IPRs or know-how;

(vi) In-depth analysis of differences in the scope of competition laws and policies in individual sectors, in the light of the process of economic globalization and liberalization;

(vii) In-depth analysis of the effectiveness of enforcement of competition laws, including enforcement in cases of RBPs having effects in more than one country;

12. Invites Governments, during future consultations in meetings of the Intergovernmental Group of Experts, to clarify the scope or application of their competition laws and policies, with a view to improving mutual understanding about substantive principles and procedures of competition law and policy, taking into account relevant provisions of the Uruguay Round Agreements. In the context of this exercise, Governments may wish to discuss:

(a) How the Set of Principles and Rules might be better implemented, particularly those provisions which have not been adequately implemented so far;

(b) The competition policy implications at the national, regional and international levels of globalization and liberalization;

(c) Techniques and procedures for detecting and sanctioning collusive tendering, including international cartels and other anti-competitive practices;

(d) The strengthening of information exchange, consultations and cooperation in enforcement at the bilateral, regional and multilateral levels;

(e) How competition laws and policy should apply to State activities such as regulation of State enterprises, State monopolies, natural monopolies and enterprises with exclusive rights granted by the State;

13. Affirms the fundamental role of competition law and policy for sound economic development and recommends the continuation of the important and useful work programme within UNCTAD's intergovernmental machinery that addresses competition law and policy issues, and proceeds with the active support and participation of competition law and policy authorities of member countries;

14. Recommends to the United Nations General Assembly to change the title of the Intergovernmental Group of Experts on Restrictive Business Practices to that of Intergovernmental Group of Experts on Competition Law and Policy;

15. Further recommends that the General Assembly convene a Fourth United Nations Conference on the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, to be held in Geneva, under UNCTAD auspices, in the year 2000.

Annex II

ATTENDANCE*

1. The following States members of UNCTAD were represented at the Conference:

Algeria
Angola
Argentina
Bahrain
Belgium
Brazil
Bulgaria
Cameroon
Canada
Chile
China
Costa Rica
Côte d' Ivoire
Cuba
Czech Republic
Democratic People's Republic of Korea
Dominican Republic
Ecuador
Egypt
El Salvador
Ethiopia
Finland
France
Gabon
Georgia
Germany
Greece
Honduras
Hungary
India
Indonesia
Iraq
Italy
Japan
Kazakhstan
Kenya
Madagascar
Malaysia
Malta
Mexico
Morocco
Nepal
Netherlands
Nigeria
Pakistan
Panama
Paraguay
Peru
Philippines
Portugal
Poland
Republic of Korea
Romania
Russian Federation
Saudi Arabia
Slovakia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Thailand
The Former Yugoslav Republic of Macedonia
Trinidad and Tobago
Tunisia
Turkey
Ukraine
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Uruguay
Venezuela
Zambia

2. The European Community was also represented.

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*/ For the list of participants, see TD/RBP/CONF.4/INF.1.

3. The following specialized agencies and organizations were represented at the Conference:

World Bank
International Monetary Fund
World Meteorological Organization
World Intellectual Property Organization
United Nations Industrial Development Organization
World Trade Organization.

4. The following intergovernmental organizations were represented at the Conference:

Commonwealth of Independent States
Organisation for Economic Cooperation and Development
Organization of African Unity

5. The following non-governmental organizations were represented at the Conference:

General Category

International Bar Association
International Chamber of Commerce
International Coalition for Development Action
World Federation of United Nations Associations

Special Category

Consumers International.

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